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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	)	IB Docket No. 96-111
and	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931

COMMENTS OF TRANSWORLD

Transworld Communications (U.S.A.), Inc. ("Transworld"), an FCC common carrier licensee under Title II of the Communications Act, and Transworld International, Inc., an FCC common carrier licensee under Title III of the Act, (collectively "Transworld"), submit these comments pursuant to the Commission's Notice of Proposed Rulemaking released May 14, 1996, in the above-captioned matter ("NPRM").

Summary

Transworld respectfully submits that it would be premature for the Commission to adopt rules at this stage, given the complexity of the issues, the paucity of specific proposals in the NPRM, and the absence of any findings showing a need for any rules. It would be more prudent for the Commission to use this proceeding for fact and idea gathering purposes, to be followed-up, if deemed necessary, by a further NPRM with more definitive proposed rules.

The Russian satellites, which are essential to Transworld's business plans and beneficial to its customers, should be excluded from any general rules that might ultimately be adopted by the Commission. The U.S. and Russia, the world's leaders in space technology, have developed a close working arrangement for space exploration and satellite communications. For overriding foreign policy and space technology considerations, the entry of Russian and U.S. satellites into the markets of these respective countries should continue to be governed by bilateral arrangements.

Finally, international receive-only satellite earth stations should be deregulated, irrespective of the ownership of the interconnecting international satellites.

Adoption of Rules Would Be Premature

The Commission is proposing to depart from a case-by-case licensing of international satellite earth stations by adopting general rules to govern such licensing. The D.C. Circuit has cautioned the FCC against adopting rules without a commensurate NPRM providing adequate notice and opportunity for comment. United States Telephone Ass'n. v. FCC, 28 F.3d 1232, (D.C. Cir. 1994). The instant NPRM is more akin to a Notice of Inquiry because it is long on questions and short on tentative conclusions and explicit proposed rules.

The NPRM is vague as to the implementation of the proposed ECO-Sat test[1/] to determine the eligibility of foreign satellites for the licensing of connecting U.S. earth stations. Apparently, U.S. earth station applications would be assessed against some undefined de jure and de facto barriers to entry by U.S. satellite systems in, not only the home country of the foreign satellite,

1/ "ECO-Sat," for "effective competitive opportunities for satellites," apparently would be applied to both the "home market" of the foreign satellite plus various "route markets" to which service from a U.S. earth station is proposed. NPRM ¶ 2.

but also in the foreign "route" countries falling within the satellite footprint. It is not clear how the FCC would assess or even authoritatively determine any such barriers. Nor is it clear how the earth station applicant or the protester of the application could obtain data regarding any such barriers or present them credibly to the Commission.

The NPRM recognizes the vagueness inherent in the application of the ECO-Sat test. For example, the NPRM recognizes as "troublesome" the application of ECO-Sat in a "truly point-to-multipoint context," in which video signals are distributed from a U.S. earth station to multiple countries via a foreign satellite. (NPRM ¶ 28.) Some of the so-called "route" countries might individually pass the ECO-Sat test while others might not. There is the additional problem presented when a U.S.-originated signal lands by satellite in one country and is transported terrestrially into an adjoining country. Not only would the application of ECO-Sat in these instances be difficult, but the FCC's proposed extraterritorial enforcement would open the regulation of global telecommunications to international discord. ECO-Sat might retard rather than promote the Commission's laudable objective of exporting U.S.-style competition.

The NPRM does not address the issue of a foreign satellite owned in whole or part by U.S. investors.[2/] How would the ECO-Sat test apply to such satellites? Would U.S.-licensed satellites with a permissible level of foreign ownership be accorded a preference over foreign-licensed satellites with a comparable level of U.S. ownership?

The Commission should use the record developed in this proceeding to decide whether the adoption of any rules is, indeed, warranted. If rules appear to be warranted, a further NPRM

2/ NPRM ¶ 30 mentions an "ownership-based approach," but is devoid of any analysis. It is not clear whether this paragraph even contemplates U.S. ownership in a foreign satellite. The paragraph appears more concerned with the national origin of investors from route countries.

longer on tentative rules and shorter on questions and vagueness could be issued. It is possible, though doubtful, that a complete record justifying specific rules can be developed at this stage. The NPRM candidly acknowledges the Commission's lack of "experience" in the complex areas involved. (NPRM n. 35.)

Need For Rules Is Problematic

The NPRM does not identify the foreign satellites that it proposes to regulate. Nor does the NPRM provide any examples of foreign entry barriers that would or could be surmounted by the enforcement of the ECO-Sat test. We believe that there are a limited number of foreign satellite systems. We also believe that, aside from the home countries, the traffic volumes between the U.S. and the various route countries would be insubstantial.

The interests of the many U.S. earth station operators, often small businesses, should not be subverted to the concerns for the foreign market entry of a few, gigantic U.S. international satellite operators. Nor should the interests of the public in low-cost access to multiple international satellites, both foreign and domestic, be ignored. Indeed, the NPRM recognizes that "U.S. users [will] benefit from greater access to non-U.S. satellites." (NPRM ¶ 9.)

The record produced as a result of the NPRM might enable the Commission to determine whether there is a real need at this time for ECO-Sat type rules. If there is such a need, a further NPRM could be issued laying the necessary foundation for any proposed rules. The instant NPRM is greatly deficient in this regard.

Effect On Future Applications Could Be Devastating

The NPRM's proposal not to apply any future rules retroactively to existing or pending applications, while commendable, begs the question of future earth station applications filed

between May 9, 1996 (NPRM adoption date) and the date that any future rules might be promulgated. The Commission has a busy agenda in implementing the Telecommunications Act of 1996. The deficiencies in the NPRM, as illustrated above, could lead to a further NPRM. The public interest would be disserved by a lengthy freeze or delay in processing newly-filed international earth station applications. Accordingly, we submit that international earth station applications should be promptly processed and adjudicated on a case-by-case basis without regard to what rules, if any, the Commission might adopt in the future.

Russian Satellites Should Be Excluded From Any General Rules

The U.S. and Russia, the world's leaders in space technology, have developed a close working, bilateral arrangement for space exploration and satellite communications. This relationship is dramatically illustrated by the presence of U.S. astronauts onboard the Russian Mir space station. Former Russian military satellites have been converted into commercial communications satellites, and the FCC has authorized Transworld and other U.S. carriers to use them to Russia and other footprint countries. No better example can be cited of the conversion of swords into plowshares.

For overriding foreign policy and space technology considerations, the entry of Russian and U.S. satellites into the markets of these respective countries should continue to be governed by bilateral arrangement rather than by unilateral FCC rules.

Receive-Only Earth Stations Should Be Deregulated

The NPRM sets forth no reasoned analysis supporting the proposed deregulation of U.S. receive-only earth stations operating with U.S. international satellites, but the continued (albeit

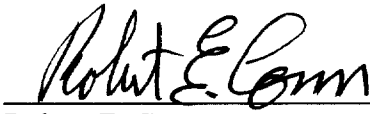
ECO-Sat more severe) regulation of such stations operating with foreign satellites, including Intelsat. Nor does the NPRM try to justify the FCC's apparent about-face from its pending 1993 proposal to eliminate mandatory licensing of all international receive-only earth stations and to substitute a voluntary registration process, consistent with the successful process earlier applied to domestic receive- only stations.

The Commission should not, we submit, retrogress to a more intrusive, unjustified regulatory scheme, particularly in light of the deregulatory tenets of the Telecommunications Act of 1996.

Conclusion

For the reasons outlined above, no rules should be promulgated as a direct result of the NPRM, other than an across-the-board deregulation of receive-only earth stations.

Respectfully submitted,



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